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IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

ADOPTIVE PARENTS OF M.N.M.,
Petitioners,

v.

M.J.L.,
Respondent.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

I. THE COURT OF APPEALS HAS ESTABLISHED A CATEGORICAL RULE GRANTING A CLASS OF BIOLOGICAL FATHERS IMMUNITY FROM THE STATUTE OF LIMITATIONS.

Respondent contends that the decision of the District of Columbia Court of Appeals creates "no new rights for fathers," and in any event is limited in its application to the "unique facts" of this case. Br. at 4. Respondent is wrong on both counts.

The rule announced by the court of appeals, although couched in words of limitation, is a categorical one. The

statute of limitations may not be applied to a putative biological father who failed to receive notice of a proposed adoption so long as the putative father alleges a consistent course of conduct aimed at securing his status as a parent. Pet. App. 19a. The effect of this rule is to insulate putative biological fathers from the limitations bar in every case in which the opponent of the adoption contends that he has minimally preserved his due process rights by "grasping his opportunity interest" and holding on to it up to the point of filing a formal challenge, no matter how belated.[1]

In essence, the court of appeals has equated the biological father's due process right to notice with a constitutional immunity from the statute of limitations. So long as the father pursues his interest, in whatever haphazard fashion, the legislature may not impose a time limit on bringing the case to court. And according to the respondent and the court of appeals, this immunity from the statute of limitations continues even where the putative father obtains actual knowledge of the adoption decree, announces in open court his intention to challenge it, and then simply fails to act within the statutory period. Pet. App. 7a.[2]

[1] At the time the court of appeals rendered its decision, respondent had not established that he in fact is the father. Pet. App. 2a n. 1. After the petition and the brief in opposition were filed, the trial court received the results of blood tests that indicate a high probability that respondent is the biological father.

[2] The majority opinion was content to dismiss respondent's failure to pursue his claim in these words:

> [Respondent] learned of the adoption in the District in early January, three months before the statute of limitations expired. . . . [W]hile [respondent's] pursuit of his claim in the District of Columbia after January 6 was *perhaps maladroit, we cannot hold that it amounted to forfeiture of his opportunity to challenge the final adoption.*

Pet. App. 18a-19a (emphasis added).

[Continued]

It is evident that nothing in the decision limits the announced rule to the facts of this case. The decision undermines the finality of every adoption decree in which there is a question about the effectiveness of notice to the biological parents, or anyone claiming to be a biological parent. Any unnotified putative biological father who *alleges* that he has not abandoned his opportunity interest will be entitled to an evidentiary hearing on his claim, no matter when it is brought. And contrary to respondent's blithe assertion, the central fact of this case—the refusal or inability of the birth mother to disclose the biological father's identity, thereby blocking prejudgment notice—is far from unique. Indeed, of the 19 appellate decisions cited by petitioners and respondent relating to adoption, 16 involve a failure to give notice of the adoption proceeding to the biological father, or in one case, the biological mother. Moreover, this Court has not been reluctant to address fundamental questions about the sanctity of the family merely because the vast range of human relations produces unconventional fact patterns. *Michael B. v. Gerald D.*, 491 U.S. 110, 113

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[2] [Continued]

The dissent saw it quite differently.

> . . . . But [respondent] and his St. Louis attorney had actual knowledge of the local adoption proceeding here for several months before the motion to intervene in the adoption proceeding in the local trial court was filed and yet took no legal action to further his interest until it was too late. His experienced counsel would have had no serious difficulty tracing the proceeding. It would be an elementary problem for counsel, perhaps a matter of a few phone calls.
>
> * * * *
>
> I am unable to view this record as portraying a young man floundering alone in a legal maze and not being able to ascertain . . . what to do about it.

Pet. App. 20a, 22a (Gallagher, J., dissenting).

(1989) ("The facts of this case are, we must hope, extraordinary.") (Scalia, J.)[3]

Respondent attempts to divert attention from the policy consideration that has prompted Congress and the legislatures of 31 states to impose a bar on untimely post-judgment challenges to final adoption decrees. According to respondent, this case does not merit review because the court of appeals did not set aside the adoption decree, but merely directed the trial court to consider the putative father's objections to the adoption and evaluate the best interests of the child. Br. at 1, 3-4. Respondent fails to appreciate that the cloud this decision places on the adopted child and her parents—five years after she was given into their care—was precisely what the legislature sought to avoid by imposing an absolute bar to untimely efforts to upset adoption decrees.

Just last month, the Court of Appeals of New York articulated the policy considerations supporting the compelling need for finality in adoptions.

> States have a legitimate concern for prompt and certain adoption procedures and their determination of the rights of unwed fathers need not be blind to the "vital importance" of creating adoption procedures possessed of "promptness and finality," promoting the best interests of the child, and protecting the rights of interested third parties like adoptive parents

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[3] In 1986, the most recent year for which statistics are available, there were 104,088 domestic adoptions. National Committee for Adoption, *Adoption Fact Book: United States Data, Issues, Regulations and Resources* (1989) at 60. Academic studies of "disruptions" in the adoption process—that is, placement of a child in an adoptive home followed by removal from that home—indicate that about 2% of adoptions are revoked because of "interference" by the biological parents. *Id.* at 197, *citing* T. Festinger, *Necessary Risk: A Study of Adoptions and Disrupted Adoptive Placements* (1986). It thus appears that every year more than 2,000 adoptions are undone at the behest of the biological parents. The studies do not reveal the number of unsuccessful challenges which nevertheless require litigation.

> (*Lehr v. Robertson*, [463 U.S. 248 (1983)] at 263-266, 266 fn 25). Recognizing those competing interests—all of which are jeopardized when an unwed father is allowed to belatedly assert his rights—we stressed . . . that the period in which the biological father must manifest his parental interest is limited in duration: if the father's actions are untimely, the State can deny a right of consent.

In the Matter of Robert O. v. Russell K., No. 191, 1992 N.Y. Lexis 3478 at *11 (N.Y. Oct. 27, 1992). Similarly, the concurrence explained that

> . . . the adoption should be left undisturbed despite petitioner's competing interest in the child not because petitioner is blameworthy, but rather because the strong public policies favoring the finality of adoptions outweigh the interest of a biological father who, through no fault of his own, has been deprived of the opportunity to "manifest and establish his parental responsibility" toward the child . . . .
>
> * * * *
>
> . . . . . While the State must make every effort to protect the rights of biological parents in adoption proceedings . . ., there also must come a point where the matter is deemed irrevocably closed, so that the parties can go forward with their lives, secure in the certainty that their legal and familial status can no longer be disturbed.

Id. at *18-*19, *22 (citations omitted).

The District of Columbia Court of Appeals, although paying lip service to "the powerful demand for finality in adoption proceedings," Pet. App. 8a, nevertheless held the statute of limitations unconstitutional as applied. Pet. App. 19a. It did so without examining the importance of the competing interest of the state, the child, and the adoptive parents in being free from the burden of unexpected and protracted litigation that, in this case, has continued for four years following the entry of a final decree. Moreover, the court—and now the respondent—

fail to explain how this result can be squared with the unbroken line of this Court's decisions holding that the legislature may constitutionally bar stale claims. *E.g.*, *Block v. North Dakota*, 416 U.S. 273, 292 (1983).

II. THE CASES CONSIDERING THE CONSTITUTIONALITY OF POST-ADOPTION STATUTES OF LIMITATIONS ARE IN CONFLICT.

Respondent contends that there is no conflict between the court of appeals' decision and *Walter v. August*, 186 Cal. App. 2d 395 (1960) and *Syrovatka v. Erlich*, 608 F.2d 307 (8th Cir. 1979), *cert. denied*, 446 U.S. 935 (1980). Remarkably, respondent asserts that these decisions are in harmony because in *Walter* and *Syrovatka*—where the courts refused to invalidate the statute of limitations on due process grounds—the objecting parent obtained actual knowledge of the adoption proceeding, but failed to act within the limitations period. Br. at 7-8. That, of course, is precisely the fact here. "[Respondent] learned of the adoption in the District in early January, three months before the statute of limitations expired." Pet App. 18a. Respondent's effort to reconcile the evident conflict makes no sense.[4]

Since the petition was filed, the conflict has widened. On October 27, 1992, the Court of Appeals of New York decided *In the Matter of Robert O. v. Russell K.*, *supra*.

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[4] The other cases cited by respondent do nothing to resolve the conflict. Br. at 8. Each of these cases involved a biological father's challenge to an adoption brought within the time allowed by the state's statute of limitations. The cases merely demonstrate that the supposedly "unique facts" here—the birth mother's concealment of the adoption from the biological father—arise with distressing frequency. *Wade v. Geren*, 743 P.2d 1070, 1073 (Okla. 1987); *Kidder v. Hess*, 11 Fla. Law W. 273, 481 So.2d 984 (Fl. App. 5th Dist. 1986); *Summers v. Mylan*, 287 Ark. 150, 152, 697 S.W.2d 91, 92 (Ark. 1985); *Sumter v. Allton*, 278 Ark. 621, 624, 648 S.W.2d 55, 56 (Ark. 1983); *In re Wildeboer*, 406 So.2d 687, 689-90 (La. App. 2d Cir. 1981); *Olney v. Gordon*, 240 Ark. 807, 811, 402 S.W.2d 651, 653 (Ark. 1966).

This case presents the conflict of competing interests among innocent parties in its purest form. The biological parents became engaged, began living together, became embroiled in domestic conflict, and then separated and ceased communication. Unbeknownst to the father, the mother had become pregnant during their relationship. She gave birth and immediately placed the child for adoption, all without informing the father. The couple subsequently reconciled and married. Only after the marriage did the mother inform her husband of the birth and the adoption. The father then promptly sought to set aside the adoption decree, which had become final 10 months earlier. *Id.* at *2-*3.

The New York Court of Appeals rejected the father's efforts to upset the adoption, recognizing that the ". . . 'vital importance' of creating adoption procedures possessed of 'promptness and finality' . . ." far outweighed the father's interest purportedly protected under the Due Process clause. *Id.* at *11. The court reasoned that the focus of analysis must be the child, and that the claims of right asserted by biological parents must be measured against the potentially devastating impact that legal uncertainly is sure to have upon an adoptive child. With this focus in mind, the court had no difficulty ruling that the father could not be permitted to attack the familial relationship that had been established. *Id.* at *12.

The New York court concluded that the final adoption decree was not subject to attack in the absence of any statute of limitations that prescribes a period within which an adoption decree may be challenged. Here, in contrast, Congress made a legislative judgment that balanced the competing interests of the child, the adoptive parents, and the biological parents, and embodied that judgment in D.C. Code Ann. § 16-310. By so doing, Congress determined that one year following entry of the decree is the maximum period for which an adopted child should be exposed to the threat of an attack on the

adoption. What the respondent characterizes as an "absolutist" position, Br. at 9, is exactly the judgment that Congress made, but which the court of appeals, and some other courts, have decided to ignore. This Court should act to correct this situation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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